IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2100 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATILAL K RAY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2100 of 1999

MR BP DALAL for Petitioner No. 1

MR N.D.GOHIL, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 25/09/2003

ORAL JUDGEMENT

It is necessary to note that this petition has been dismissed twice in default by this Court and

thereafter restored by this Court on 21.1.2000 and 7.3.2001. The same difficulty has also arisen today because when the matter has been called out learned advocate Mr. B.P.Dalal is not remained present before this Court. Learned AGP Mr. N.D.Gohil appearing on behalf of respondent State.

2. The grievance of the petitioner is that respondents are not issuing No Event Certificate and also not making payment of of Rs.83,566.56 paise towards the commuted pension and Rs.5000 towards withheld amount of gratuity with interest. The petitioner has also prayed for revision of his pension w.e.f. 1.9.1991 along with other reliefs.

3. Affidavit-in-reply has been filed on behalf of respondent No.2. The relevant averments made in paragraphs 2, 3, 4 and 5 are as under:

"(2) I say and submit that the petitioner was working in the cadre of Executive Engineer (Elect) at Baroda Elect. Division (R&B) Baroda and retired on 31.8.1991. The revised provisional pension w.e.f. 1.1.1996 has been sanctioned to the petitioner as per revised scale on 8.2.2000 by Superintending Engineer, Electrical Circle, Gandhinagar. I say that the petitioner is in agreement to the fact that the procedure to give pensionary benefit was followed. Finalisation of pension requires No Event Certificate as per government rules and due to departmental inquiry, Government has not issued No Event Certificate till today.

(3) I say and submit that the Government had given chargesheet to the petitioner and hence the pension case was delayed. His final G.P.F. was sanctioned by A.G., Ahmedabad's letter dated 22.12.1995 and payment was made by Executive Engineer Vadodara on 9.1.1996. Therefore, there is no question of delay. I submit that Hon'ble High Court of Gujarat had granted interim relief in Special Civil Application No. 9467 of 1994, and ordered to release the withheld amount of commuted pension and gratuity to the petitioner. As per Hon'ble High Court order, Government have already granted 100% provisional pension according to the rules and the petitioner is also expecting the benefit of 100% provisional pension and therefore the question of commuted pension does not arise. Moreover the petitioner was also

given gratuity amount of Rs.5000/- withheld as per G.R. dated 15.1.1993 due to pending departmental inquiry against the petitioner. I say that the Government had already filed an affidavit in SCA No. 9467 of 1994 on 6.8.1996 wherein it was clearly mentioned the rules position of Govt. regarding payment of pensionary benefits in case of pending departmental inquiry.

(4) As stated above the payment of final G.P.F. was made on 9.1.1996 by Executive Engineer, Vadodara. I submit that there were two departmental inquiries against the petitioner. One departmental inquiry had been dropped as per Govt. order dated 26.8.1994. I say that since the departmental inquiry has been pending with the Government, the question of issuing No Event Certificate does not arise. The rule position was already mentioned in affidavit filed in SCA No. 9467/1994 on 6.8.1996. The petitioner has also been served another chargesheet in other inquiry and the process of that inquiry is still going on. Till today the departmental inquiry against the petitioner has not been finalized and it is under process. The petitioner has hide this information in his petition.

(5) I say that the revised provisional pension has been sanctioned on 8.2.2000 and the difference of Rs.64215/- has also been paid to Shri Ray. However, I submit that the pension can be finalised only after issuance of No Event Certificate. The interest will be paid as per Government rules and regulations. so far as G.P.F. final payment is concerned Rs.31,797/- with interest upto 8/94 was paid. I, therefore, say that there is no harassment to petitioner and the Govt. has acted only as per the rules.

4. In light of the averments made in above referred to paragraphs in the reply of the respondent, according to my opinion now nothing remained to be paid by the respondents to the petitioner. Now only one fact is remained that a departmental inquiry is pending against the petitioner and not completed that is how No Event Certificate is not issued by the respondents. Considering the averments made in the reply, a moment, inquiry will be over the respondents will issue No Event Certificate in favour of the petitioner and thereafter his case will be finalised for pension and whatever

amount of interest available to the petitioner same will be paid by the Government on the basis of their G.R. Therefore, in light of the affidavit in reply filed by the respondent, according to my opinion nothing further remains in the present petition except No Event Certificate which is not issued by the respondents because of the pendency of departmental inquiry and also case of pension is not finalized because of pendency of departmental inquiry, though 100% provisional pension has been paid with arrears to the petitioner by the respondents. therefore, according to my opinion, considering the reply filed by the respondent almost all the claim of the petitioner has been satisfied by the respondents, therefore, there is no substance in the present petition and the same is dismissed. Rule is discharged. No order as to costs.

(H.K.Rathod,J)

Jayanti*